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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 GoDaddy.com LLC and GoDaddy.com LLC
10 Welfare Benefit Plan,

11 Plaintiffs,

12 v.

13 Dustin Monson,

14 Defendant.

No. CV-16-0948-PHX-DKD

ORDER

15 Defendant Dustin Monson moves to dismiss the breach of contract claim brought
16 in Count Two of the Complaint by Plaintiffs GoDaddy.com LLC and GoDaddy.com LLC
17 Welfare Benefit Plan (“GoDaddy”). (Doc. 15) Monson argues that GoDaddy cannot
18 maintain a state law cause of action because it is expressly preempted by the Employee
19 Retirement Income Security Act of 1974 (“ERISA”). In response, GoDaddy argues that
20 a breach of contract claim is permitted in these circumstances by a binding and valid
21 Ninth Circuit case. (Doc. 16) The Court concludes that this case is distinguishable and
22 finds that the breach of contract claim is a legal remedy that is not available under
23 ERISA’s equitable recovery scheme. The Court will therefore grant Monson’s motion to
24 dismiss.

25 **Factual and Procedural Background**

26 The relevant background appears to be undisputed. (Docs. 15, 16, 17) Monson
27 was injured in a motorcycle accident while he was a GoDaddy employee and covered by
28 the GoDaddy Welfare Benefit Plan (“Plan”). He recovered tort damages for his injuries

1 when he settled his demands for the policy limit from the adverse driver and from his
 2 own underinsured motorist policy. Because the Plan had paid for Monson's medical
 3 expenses, it demanded reimbursement from settlement proceeds pursuant to the Plan's
 4 terms for subrogation and reimbursement. Monson did not comply and so GoDaddy
 5 initiated this action seeking legal and equitable relief.

6 **Analysis**

7 ERISA permits civil actions

8 by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice
 9 which violates . . . the terms of the plan, or (B) to obtain other appropriate
 10 equitable relief (i) to redress such violations or (ii) to enforce any
 provisions of . . . the terms of the plan.

11 29 U.S.C. § 1132(a)(3). By its plain terms, equitable relief is authorized. The question
 12 here is whether Section 1132(a)(3) permits legal relief such as the breach of contract
 13 claim asserted in Count Two. At the outset, the Court notes that the statute's clear failure
 14 to reference legal relief would appear to doom any claims for breach of contract. *Mertens*
 15 *v. Hewitt Associates*, 508 U.S. 248, 255 (1993) ("Money damages are, of course, the
 16 classic form of legal relief."). *Providence Health Plan v. McDowell*, 385 F.3d 1168,
 17 1174 (9th Cir. 2004) (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S.
 18 204, 214 (2002)) ("The basis for petitioners' claim is . . . that petitioners are contractually
 19 entitled to *some* funds for benefits that they conferred. The kind of restitution that
 20 petitioners seek, therefore, is not equitable—the imposition of a constructive trust or
 21 equitable lien on particular property—but legal—the imposition of personal liability for
 22 the benefits that they conferred upon respondents.") *See also Oregon Teamster*
 23 *Employers Trust v. Hillsboro Garbage Disposal, Inc.*, 800 F.3d 1151, 1162 (9th Cir.
 24 2015) (W. Fletcher, J. concurring) ("[a]n ERISA fiduciary cannot bring a damages suit to
 25 enforce an ERISA plan; it can sue only for equitable relief. Nor can such a fiduciary
 26 bring a state-law breach of contract suit to enforce the terms of the ERISA plan, because
 27 such a suit would clearly "relate to an[] employee benefit plan" and thus be preempted.
 28 29 U.S.C. § 1144(a)."). (internal citation omitted).

1 GoDaddy argues that its breach of contract claim survives because there is one
2 case where the Ninth Circuit did not find that a Plan's breach of contract claim was
3 preempted. *McDowell*, 385 F.3d at 1173. In *McDowell*, a Plan sued insureds in state
4 court to recover third-party settlement proceeds. *Id.* at 1171. Specifically, the Plan
5 alleged two breach of contract claims: one alleging that the insureds had violated the
6 Plan contract and another claim alleging that the insureds had a secondary contract
7 between the insureds and their attorneys which "direct[ed] their attorney to reimburse
8 [the Plan] for benefits paid in the event of any recovery from a third party." *Id.* The
9 insureds removed the case to federal court where the district "court held that it had
10 removal jurisdiction and that ERISA preemption barred [the Plan's] claims." *Id.* On
11 appeal, the Ninth Circuit concluded that the Plan's breach of contract claim against
12 McDowell was not preempted because "[a]djudication of [the Plan's] claim does not
13 require interpreting the plan" and "[b]ecause this is merely a claim for reimbursement
14 based upon the third-party settlement, it does not 'relate to' the plan." *Id.* at 1172.¹

15 The *McDowell* Court found that the breach of contract claim was not preempted
16 and it also found that the claim was "not within ERISA's civil enforcement provisions."
17 *Id.* at 1173. Accordingly, the Court concluded that the claim did not meet the two part
18 test for removal jurisdiction and remanded the contract claims to state court. *Id.*

19 Since then, parties—and Courts—have struggled to harmonize *McDowell's*
20 conclusion that adjudicating a breach of contract claim does not require interpretation of
21 the plan with preexisting Ninth Circuit precedent like *Bui v. American Telephone &*
22 *Telegraph Co. Inc.*, 310 F.3d 1143, 1152 (9th Cir. 2002) ("ERISA preempts [the
23 insured's] contract claims. These claims do not merely reference the ERISA plan, they
24 require its construction because the contract allegedly breached is the ERISA plan itself.
25 Accordingly, ERISA preempts the contract claims.") (internal citations omitted). Judge

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27 ¹ The Ninth Circuit reached this question because the U.S. Supreme Court
28 explicitly left open the question of "whether a direct action by petitioners against
respondents asserting state-law claims such as breach of contract would [be] preempted
by ERISA." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 220 (2002).

1 William Fletcher's above-cited concurrence in *Oregon Teamster Employers Trust* also
 2 comments on the tension that exists between the ERISA preemption and the Ninth
 3 Circuit's holding in *McDowell*:

4 *McDowell* and this case can be distinguished in two ways, but
 5 neither finds significant support in ERISA. The result in
 6 *McDowell* depends on the panel's claim that '[a]djudication
 7 of (the fiduciary's) claim does not require interpreting the
 8 plan or dictate any sort of distribution of benefits.'
 9 [*McDowell*, 385 F.3d at 1172]. In this case, by contrast, as the
 panel opinion explains, OTET's breach of contract claim both
 requires interpreting the plan and turns on a provision that
 dictates the distribution of benefits. *See* Op. at 1156. But the
 first distinction is entirely illusory, and the second is a
 distinction without a difference.

10 *Oregon Teamster Employers Trust*, 800 F.3d at 1162. But apart from this fair criticism of
 11 the rationale of *McDowell*, there remains a basis to conclude that *McDowell* still requires
 12 dismissal of the contract claim where the claim only asserts a breach of the plan itself.
 13 This is because the *McDowell* Court addressed two independent breach of contract claims
 14 but did not distinguish between them in its analysis.² (Docs. 15, 17) In contrast to
 15 *McDowell* where the contract claim also sought to enforce the secondary contract
 16 between the insureds and their attorneys, GoDaddy's claim asserts only a breach of the
 17 plan itself. Thus the claim has reference to an ERISA plan, which necessarily requires
 18 interpretation of the Plan. In such a case the state claim is properly preempted. *Oregon*
 19 *Teamster Employers Trust*, 800 F.3d at 1156.

20 Nor is there a basis to conclude that the relief sought in Count Two fits within the
 21 traditional realm of permissible ERISA equitable relief which the Supreme Court
 22 described at length in *Sereboff v. Mid Atlantic Medical Services*, 547 U.S. 356, 126 S.Ct.
 23 1869 (2006).

24 Finally, it may not be necessary to distinguish *McDowell*. The procedural posture
 25 of *McDowell* presented a question of removal jurisdiction which the Ninth Circuit
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27 ² This Court notes that the Plan was not a party to the secondary contract and that
 28 the secondary contract could not have been "enforced without reference to the employee
 benefit plan." *Providence Health Plan v. McDowell*, 3:01-cv-01704-JE, Doc. 13
 (Opinion and Order at 4, n.1)

1 resolved in the negative. In other words, the *McDowell* breach of contract claim was not
2 preempted by ERISA but it could not remain in federal court. 385 F.3d at 1173.
3 GoDaddy's complaint alleges that this Court has removal jurisdiction under 28 U.S.C. §
4 1441(c) ("Removal of civil actions; joinder of Federal law claims and State law claims").
5 (Doc. 1 at ¶10) However, GoDaddy does not explain how to distinguish this case from
6 *McDowell* in a way that would allow this Court to retain jurisdiction over the state law
7 claim of breach of contract.

8 **Conclusion**

9 Either this case is different from *McDowell* because GoDaddy's breach of contract
10 claim does require interpretation of the ERISA plan and, as a result, the claim is
11 preempted. Or this case is similar to *McDowell* because the breach of contract claim is
12 not within the scope of Section 1132(a) and, therefore, the Court does not have removal
13 jurisdiction. Either way, the conclusion is the same and the breach of contract claim
14 should not stand in federal court.

15 **IT IS THEREFORE ORDERED** granting Defendant Monson's Motion to
16 Dismiss Count Two of Plaintiff's Complaint (Doc. 15).

17 Dated this 20th day of September, 2016.

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David K. Duncan
United States Magistrate Judge